U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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DEC 21 2004

FILE: [redacted] Office: JACKSONVILLE, FLORIDA Date: SRC-03-128-50637

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The District Director's decision will be withdrawn, and the application will be approved.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. The CAA provides, in part:

> [T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, (now the Secretary of Homeland Security, (Secretary)), in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The District Director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated April 12, 2004.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The record reflects that on January 12, 1996, in the Circuit Court, Sixteenth Judicial Circuit in and for Monroe County, Florida, the applicant was convicted of escape pursuant to the Florida Statutes (F.S.), § 944.40, a second degree felony and he was sentenced to three years probation and a $250 fine.

In *Matter of Perez-Contreras,* 20 I&N Dec. 615, 617-18 (BIA 1992) the Board held:

> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

Moral turpitude refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general. See *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988); *Matter of Flores*, 17 I&N Dec. 225, 227 (BIA 1980). Moral turpitude has been defined as an act, which is per se morally reprehensible and intrinsically wrong, or malum in se, so it is the nature of the act itself and not the statutory prohibition of it, which renders a crime one of moral turpitude. *Matter of P-*, 6 I&N Dec. 795 (BIA 1955).

In *Matter of Szegedi,* 10 I&N Dec. 28, 34 (BIA 1962), the Board stated that, "voluntariness or intent to commit the act or some act must exist before we can find that the crime involves moral turpitude." Moreover, the Board has stated that:

> In determining whether a crime involves moral turpitude . . . [t]he statute under which the conviction occurred controls. If it defines a crime in which turpitude necessarily inheres, then the conviction is for a crime involving moral turpitude . . . . *See Matter of Short,* 20 I&N Dec. 136 (BIA 1939), citing *Matter of Franklin,* 20 I&N Dec. 867, 869 (BIA 1994).

The crime for which the applicant was convicted, F.S. § 944.40, states:

> Any prisoner confined in any prison, jail, private correctional facility, road camp, or other penal institution, whether operated by the state, a county, or a municipality, or operated under a contract with the state, a county, or a municipality, working upon the public roads, or being transported to or from a place of confinement who escapes or attempts to escape from such confinement commits a felony of the second degree. . . .

F.S. § 944.40 does not contain the mens rea element necessary for a crime to qualify as a crime involving moral turpitude. The statute contains no vicious motive or corrupt mind element in its definition, nor does the definition contain an element of intentional or knowing conduct. F.S. § 944.40, thus, does not qualify as a crime involving moral turpitude. Based on the above the AAO finds that the applicant was not convicted of a crime involving moral turpitude. Therefore the applicant is not inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

The applicant is eligible for adjustment of status to permanent residence pursuant to section 1 of the CAA of November 2, 1966. The District Director did not raise any other basis for denial. Accordingly the District Director's decision will be withdrawn, and the application will be approved.

ORDER: The District Director's decision is withdrawn. The applicant is approved.